IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH PAUSHA 1928

MFA.No. 1056 of 2002()

IC.90/2000 of EMPLOYEES' INSURANCE COURT, PALAKKAD

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APPELLANT/ OPPOSITE PARTY:

THE REGIONAL DIRECTOR,
E.S.I.CORPORATION,
THRISSUR.

BY ADV. SRI.T.V. AJAYAKUMAR

RESPONDENT/ APPLICANT:

THE SECRETARY,
M/S.AKATHETHARA CO-OPERATIVE MILK
SUPPLY SOCIETY LTD, PALAKKAD.

BY ADV. SRI.N. RAGHURAJ
ADV. SMT.K. AMMINIKUTTY
ADV. SRI.A.V. RAVI

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 03/01/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

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M.F.A. No. 1056 OF 2002

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Dated this the 3rd January , 2007

J U D G M E N T

The E.S.I. Corporation challenges the order passed by the Employees' Insurance Court. By the order impugned, the Employees' Insurance Court held that the respondent-Society is not liable to pay interest on the amount of contribution for the period from 23.07.1991 to 11.10.1993 as it is barred by limitation. It was also held by the Employees' Insurance Court that the demand for damages amounting to Rs. 35,807/- under section 85-B of the E.S.I. Act is unsustainable.

2. Akathethara Co-operative Milk Supply Society Ltd., Palakkad is the employer. The E.S.I. Corporation, as per the order dated 12.10.1998, informed the Society that the factory run by it is covered under the Act with effect from 23.07.1991. The Society paid the arrears of contribution for the period from 23.07.1991 to 30.09.1998 in instalments. The arrears of contribution was paid before 08.04.2000.

3. Ext. B3 notice dated 28.08.2000 and Ext. B4 Form D-18 dated 28.08.2000 were issued by the E.S.I. Corporation demanding interest and damages for the delayed payment of contribution. Consequently, the E.S.I. Corporation passed Ext.A1 Form C18 order dated 14.11.2000 for Rs. 83,769/- and Ext. A2 order dated 16.11.2000 imposing damages for Rs.35,807/- under section 85-B of the E.S.I. Act. These orders were challenged by the Society before the Employees' Insurance Court.

4. It was contended before the Employees' Insurance Court that the demand for contribution for the period from 23.07.1991 to 11.10.1993 would have been barred and therefore any claim for interest for that period is also barred. The Insurance court accepted these contentions and held that the Corporation is entitled to realise interest only for the period from 12.10.1993 to 30.10.1998. Learned counsel for the appellant submits that the above said finding rendered by the Employees' Insurance Court is against the decision of the Division Bench of this Court reported in **Vijayan Pillai vs. E.S.I. Corporation (1998 (1) KLT 373).** He also submitted that though the decision of the Division Bench was overruled by the Full Bench in the decision reported in **E.S.I. Corporation vs. Excel**

Glasses Ltd. (2003(3)K.L.T. 42), the same was reversed by the Supreme Court in the decision reported in **E.S.I.C. vs. C.C. Santhakumar (J.T. 2006 (10)S.C. 549)**. The Supreme Court has held that the period of limitation of five years mentioned in the proviso to clause (b) of Section 77(1A) of the E.S.I. Act will apply only in respect of the claim made by the Corporation before the Insurance Court and it does not apply to the demand for interest made by the Corporation for the delayed payment of contribution. It was held that the right of the Corporation to recover interest by coercive process is not restricted by any limitation nor could the Government by recourse to the rule-making power prescribe a period in the teeth of Section 68. When the Act itself does not provide for any limitation on the Corporation's right to claim, the employers cannot rely upon Regulations 32 to 66, dealing with the period for maintenance of registers, to imply any limitation, it was held. It was also held that if the period of limitation prescribed under proviso (b) of Section 77(1A) cannot be read with the provisions of Section 45A as it would defeat the very purpose of enacting Sections 45A and 45B. It was also held by the Supreme Court that the proviso to clause (b) of Section 77(1A) of the Act, fixing the period of five

years for the claim made by the Corporation, will apply only in respect of the claim made by the Corporation before the Employees' Insurance Court and not in respect of any other proceedings. In view of the authoritative pronouncement by the Supreme Court, I hold that the Employees' Insurance Court was not justified in taking the view that the employer Society is not liable to pay interest for the period from 23.07.1991 to 11.10.1993 on the ground that it is barred by limitation.

5. As regards damages, learned counsel for the appellant, relying on the decision reported in **I.L.R. 2006 (1) Kerala 403** (**Regional Director, E.S.I. Corporation vs. Managing Director, M/s. Transmatic System Ltd.)** and also on the decisions referred to therein, contended that the Employees' Insurance Court was not justified in holding that the employer is not liable to pay damages. He submitted that the payment of contribution and interest will not absolve the employer from the liability to pay damages under section 85-B of the E.S.I. Act. Learned counsel for the respondent, on the other hand, submitted that the employer is a Society where the employees are also members and that any profit made by the Society would be beneficial to the members as well. He submitted that a

distinction is to be drawn between an employer who retains the collection made from the employees as contribution, and an employer who fails to collect contribution from the employees who are also members of the employer Society. I am inclined to agree with the contention raised by the respondent. It cannot be said that there is contumacious conduct or negligence on the part of the respondent in the matter of remittance of contribution. The Society is intended for the benefit of the milk producers. It is also fairly conceded by the Corporation, as is clear from the proceedings that the Society was facing financial crisis.

6. Taking into account the facts and circumstances of the case, I am of the view that there is no ground for interference in the order passed by the Insurance Court in so far as its findings on the question of damages.

In the result, the M.F.A. is allowed in part and the order passed by the court below that the employer is not liable to pay interest for the period from 23.07.1991 to 11.10.1993 is set aside. All other findings are confirmed.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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M.F.A. No. 1056 OF 2002

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Dated this the 3rd January, 2007

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